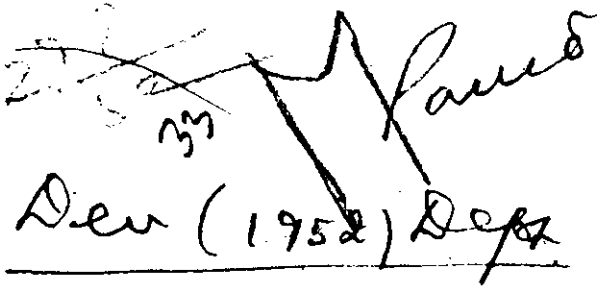


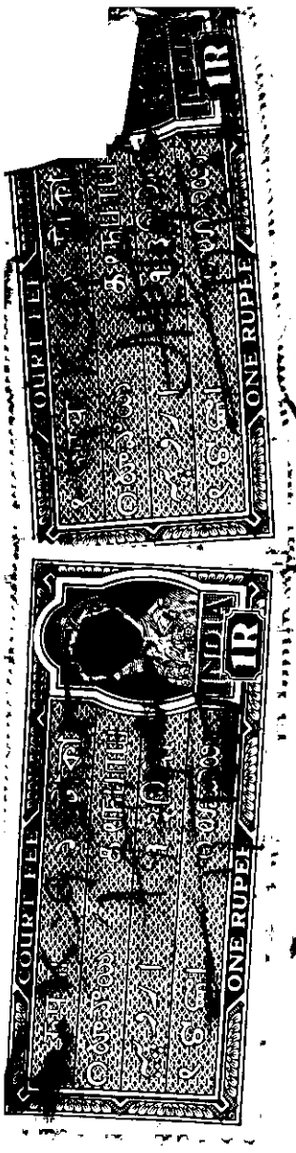
Dev (1952) Dept

Memo

No. 13800/5/52

Dated 29.3.52

prohibition - licence in form 2 -
Cancellation - appeal submitted



138007

S2

To

The Government of Madras,
Development Department, Fort St. George,
M a d r a s. 9.

FIRST ASST. SECRETARY TO GOVERNMENT
19 DEC 1951
DEVELOPMENT DEPARTMENT

Appeal petition of Sri Ganapathi Shet, Proprietor, Messrs. Shet's Novelty Stores, Chemists & Druggists, Coondapoor, South Kanara.

Sub:- Prohibition - Licenses in Form 2 - cancellation - Appeal submitted.

Being aggrieved by the orders L.Dis.11083/51 dated 18-4-1951 and L.Dis.18767/51 dated 10-7-1951 of the Collector of South Kanara and D.No.2703/PRO/51 dated 18-10-1951 of the Board of Revenue,(Excise), Madras, the appellant begs to approach the benign Government with the following grievances with the best hope that justice would be meted out to him.

The appellant was granted a license in Form 2 for the possession and sale of Brandy and other medicated wines under the conditions mentioned in Collector's Ref.C.No.11886/47 dated 7-1-1948 and also the other conditions stipulated in the license and he was enjoying the privileges of this license till 31-3-1951. As usual the appellant applied for the renewal of this license for the year 1951-52 but to his great misfortune his renewal application was rejected by the Collector of South Kanara without assigning any reason whatsoever. The appellant again approached the Collector for reconsideration of his orders but this petition was also rejected by the Collector without giving any reason for the non-renewal of the license for 1951-52. Then

the appellant approached the Board of Revenue in appeal but unfortunately for this appellant the Board has also declined to interfere on his behalf.

The appellant therefore begs to submit that he had been enjoying the privileges of the license ever since the prohibition was introduced in this district in 1947. They had been dealing in Brandy and medicated wines strictly in accordance with the conditions of the license as also the special conditions imposed by the Collector in his Ref.C.No.11886/47 dated 7-1-1948 and the very fact that not even a single defect or irregularity in the issue of Brandy etc. was noticed by any of the prohibition staff who inspected the relevant accounts and registers during the last about 5 years period is in itself a sufficient proof to show that they were strictly adhering to the conditions of the license. Brandy was being issued only on production of medical prescriptions as required by the rules and particulars of issues, prescriptions etc. were duly being noted in the concerned register as required under the rules. A statement of issues was being submitted to the collector and the Dt.Prohibition Officer every month on due dates as required under the license conditions and the appellant do not know in what way they have violated if at all, the license conditions to warrant the cancellation of his license. Even now they are unaware of the reasons for the non-renewal of their license and they are therefore not in a position to explain any allegations against this licensee if any.

We therefore feel and hereby submit that the collector ought to have specifically informed us of the charges that might have been brought against if any and

should have given a reasonable opportunity to explain our position before the cancellation of the license in question.

In the said connection the appellant begs to submit that ours is a regular druggist and chemist firm of a standing reputation in Coondapoor and the denial of Form 8 License will seriously affect our trade and we shall be put to a great loss and thereby cause hardship to the public also in the event a license is refused to us.

Under these circumstances the appellant beg that the Collector may be directed to renew our Form 8 II License for the year 1951-52 and he may also be instructed to enlighten us of the irregularities if any, so that we may guard against such irregularities in future.

The Board's order appealed against is herewith enclosed.

We remain,
Yours faithfully,

Coondapoor,
13th December 1951.

Appellant.

Enclosure:-

Original order of the Board.

Rev (S)

Ende no 13800(1)/51-1 dy 26-12-51)
Referred to the Bd. of Rev (Exc) for urgent remarks.
23.12.51

The Bd. of Rev (Exc)

Post Box No. 405 Tele: Code word "Quyadarce"
OFFICE OF THE BOARD OF REVENUE (EXCISE) MADRAS.

D.No. 2703-Pro/51. Dated 18.10.1951.

Sri V.N.Kudva, I.C.S.
Commissioner of Commercial Taxes.

....

Sub: Prohibition - South Kanara - Form II Licence - Non-renewal to Messrs. Novelty Stores - Coondapur - Appeal - Orders - Passed.

Read: Appeal petition dated 14.8.1951 from Sri Ganapathi Shet, Proprietor, Shet's Novelty Stores, Coondapur. From the Collector, South Kanara, Ref. No.A4/24073/51, dated 3.10.1951.

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RESOLUTION:

The Board sees no reason to interfere on behalf of the Petitioner. The appeal petition of Sri G.Ganapathi Shet is therefore rejected.

× × ×

V.Krishnamurti,
Assistant Secretary.

To Sri M.Ganapathi Shet, Proprietor,
Shet's Novelty Stores, Coondapur.(para 1 only).
To the Collector, South Kanara.
(with encls. by Registered Post).

....

Forwarded / By Order.

Superintendent.

BOARD OF REVENUE(EXCISE) DEPARTMENT.

*****

7 / 3234

Subject: Prohibition - Licences in Form II - Cancellation - Appeal by Messrs. Shet's Novelty Stores, Chemists & Druggists, Coondapur, South Kanara District.

Read: Government Endorsement No. 138007 3/51-1, dated 24.12.1951.

...

C.R.No. 49219 Pro/51-X.C.5.
Station: Triplicane, Madras-5: dated: 4.1.1952.

From

Sri V.Krishnamurti, B.A.,
Assistant Secretary, Board of Revenue(Excise).

****

Sri V.N.Kudva I.C.S.,
Member, Board of Revenue and Commissioner of Commercial Taxes.

******

L.Dis:

The Board submits that Messrs. Shet's Novelty Stores, Coondapur, were holding a Form II Licence inclusive of brandy under the Madras Prohibition Act. The Licence was not renewed for the year 1951-52 by the Collector, South Kanara District, as the licensees were found to misuse the privilege granted to them and were issuing brandy freely on such ~~xix~~ flimsy prescription as "cold", "Massage", "Dysentry" for the cow of ...." etc. During Quarter ending 31.12.50, the licensees sold 2 gls. and 35 1/3 drs. of brandy, the highest quantity sold in the District from any other licensee and the sales were on prescriptions of the above nature. There is another licensee at Coondapur to supply the legitimate needs of the public of the locality. The Board did not consider it necessary to restore the licence to the Company in the above circumstances and rejected their appeal on the Collector's orders. 1A

5-1-52

ASSISTANT SECRETARY.

To

The Secretary to Government,
Development Department.

...

5.1.52

AC.4.1.4/51

Dev(s)

Memo no. 138007-S/51-4 dated 29.3.52

Sub: Prohibition — licence in Form II — Cancellation — Appeal by M/s Shet's Novelty stores, Coondapur — order passed.

Ref: Petition of 15-12-51 from M/s Shet's Novelty Stores, Coondapur. South Kanara.
From the Bd. of Rev (Ex) CR no. 49219 P no/51 X dated 4-1-52.

The Govt. consider that the licence in Form II to M/s Shet's Novelty Store, Coondapur should be granted and that their case may be considered after the rules are framed for guiding the Collector in the exercise of his powers under section 18 of the Madras Prohibition Act.

2. The petitioners are referred to the BS. of Rev (Ex) for orders.

To the BS of Rev (Ex)

Copy to M/s Shet's Novelty Stores, Chemists & Druggists, Coondapoor, S. Kanara (Dam. ...)

Dew (5)

Prohibition — licences in Form II — Cancellation — Appeal by M/s Sheth's novelty stores, Chemists and Druggists, Coondapur —

pp 1-3 CF — From the M/s Sheth's novelty stores, Petn. dt 15.12.51
p 7 CF — From the Bd. of Rev (Ex) CR no. 49219 P4/51 XCS dt 4.1.52

Please see the petition from M/s Sheth's Novelty stores of Coondapur at pp 1-3 CF. and the Bd's remarks at p 7 CF.

pp 1-3 CF — M/s Sheth's Novelty Stores have appealed to Govt against the proceedings of the Bd. refusing to renew their Form II licence for the year 1951-52. on the following grounds:

1. That their renewal application was rejected without assigning any reason whatsoever
2. That not even a single defect or irregularity in the issue of Brandy etc. was noticed by any of the P when. Staff and,
3. That they were not given any opportunity to explain their position before the Cancellation of their licence.

p 7 CF — The Bd. has stated that their licence was not renewed for the current year because the licensees were found to misuse the privilege granted to them and they were issuing brandy on. fictitious prescriptions as cold Massage Dysentery for the Cure of etc. In view of the above malpractices by the petitioners, the Bd. does not consider it necessary to restore the licence to the Company.

~~In the circumstances, the is~~
~~[illegible] the Bd's view~~

~~may be accepted and the petition rejected.~~

~~(ii) may also be~~

8/12.1.52

It is submitted that under the note to condition 1 of the licence, if the medical certificate contains detailed reasons for recommending Brandy, the dealer can supply. The medical certificate is supposed to have contained expressions such as 'Cold' 'Massage' etc. The Collector recommended cancellation as the dealer supplied brandy on these "flimsy" prescriptions. The point for consideration is whether the dealer could refuse supply on these certificate. There seems to be no option to the dealer in the matter. It is therefore for consideration whether the cancellation justifiable can be considered legal although it may be justifiable for the proper enforcement of the Act.

It is also submitted that the cancellation is done at the discretion of the Collector under condition 11. Legal Dept have advised in another connection basing on the recent judgment of the High Court in Cotton Control Case that such unfettered discretion without giving an opportunity to the dealer is not legal In the circumstances, it is for orders whether the order of cancellation will stand.

Legal may give their opinion

for 1: licence

page

Licence

It not put Consultation DS

ASSISTANT SEC 968 21 JAN LEGAL DEPA

12/1/52.

12/1/52 DS/Sd (opi) Dasan 13/1

I do not think that the dealer can refuse supply

Legal (Constitution) Department.

Under section 18 of the Madras Prohibition Act, 1937 (Madras Act X of 1937) the State Government, or subject to the control of the State Government, the Collector may issue licences to any person or in respect of any institution whether under the management of the Government or not, for the manufacture, export, import, transport, sale or possession of any liquor, intoxicating drug or article containing such liquor or drug on the ground that such liquor, drug or article is required by such person or in respect of such institution for bona fide medicinal, scientific, industrial or such like purpose. At the time the Collector refused to renew the licence of the petitioner, no rules were in force laying down the general principles to guide the Collector in the exercise of his powers under section 18 of the Act. In view of the recent judgment of the High Court in the Khadi (Development) Order case, the action of the Collector in not renewing the licence would be bad in law.

This Department also agrees with Development that in the circumstances of this case, the dealer cannot properly be found fault with for having supplied brandy on the strength of the medical certificates produced before him.

The licence may therefore be granted to the petitioner, and his case considered after the rules are framed for guiding the Collector in the exercise of his powers under section 18 of the Act.

16/3/52

D.S. 15/3/52

D S

Dev't 32281

Legal. No. 96852

D. 19.3.52

To Hs

Excpts

The notes from p1 above may be perused. Legal have observed that in the circumstances of this case, the dealer cannot properly be found fault with for having

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138007 S/51
13
29/3

Supplies brandy on the strength of the medical certificates produced before them and that the licence may be granted to the petitioner and this case be considered after the rules are framed for guiding the Collector in the exercise of the powers under section 18 of the Madras Prohibition Act.

P.S. ist

This Deptt. may agree with Legal and the petitioner be granted licence subject to orders a draft memo is submitted herewith for approval

H.H (RD) may see

25.3.52 25/3/52

27/3/52 D.S.I

A - may be agreed to

28.3.52

29/3

H.M. (R.D.)

A

DEPUTY SECRETARY TO GOVERNMENT
29 MAR 1952
DEVELOPMENT